

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD L. AHEARN, Regional Director of the
Nineteenth Region of the National Labor
Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

INTERNATIONAL LONGSHORE and WAREHOUSE
UNION, LOCAL 21

Respondent

and

DAN COFFMAN, AN INDIVIDUAL

BRYAN JACOBS, AN INDIVIDUAL

MICHAEL KELLY MULLER, AN INDIVIDUAL

Additional Respondents in Contempt

Civil No. 3:11-CV-05684 -RBL

) FINDINGS OF
) FACT AND CONCLUSIONS
) OF LAW FOR CONTEMPT OF
) THE SEPTEMBER 8, 2011
) PRELIMINARY INJUNCTION
) (Amended)

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1 were enjoined and restrained from "[e]ngaging with an unlawful object, *inter alia*, in trespassing,
2 picket line violence, threats and property damage, mass picketing and blocking of ingress and
3 egress at the facility of EGT, LLC, located in Longview, Washington, or impeding rail or ship
4 traffic anywhere destined to or from EGT's facility in furtherance of Respondent Locals 21 and 4's
5 dispute regarding work performed at or related to the EGT facility;" ~~and from "furthering their~~
6 ~~unlawful object by restraining or coercing the employees of EGT, General Construction, or any~~
7 ~~other person doing business in relation to the EGT facility in the exercise of their rights~~
8 ~~guaranteed under Section 7 of the Act" by any other means.~~ [Document No. 58]. RBL

9 5. On September 15, 2011, this Court found Respondents in contempt for having
10 engaged in contumacious conduct on September 7 and 8, 2011, in direct violation of the
11 Restraining Order. [Document No. 73]

12 6. Despite the issuance of the Injunction, the prior findings of contempt of the
13 Restraining Order and the clear mandate of this Court that the trains serving the EGT facility were
14 not to be held hostage, Respondents engaged in further blocking of the ingress of a Burlington
15 Northern Santa Fe ("BNSF") train destined for the EGT facility.

16 7. At approximately 10:00 am on or about September 21, 2011, officers and agents
17 of Respondents blocked the railroad tracks leading into the EGT facility. Specifically, Respondent
18 21's president, Dan Coffman, and those acting in concert with him, while wearing insignia and
19 carrying signs identifying Respondents, blocked the tracks and prevented the passage of a BNSF
20 train scheduled to deliver corn to the EGT facility.

21 8. At approximately the same time on September 21, 2011, Byron Jacobs and
22 Michael Kelly Muller, officers and agents of Respondent 21, stood alongside the railroad right of
23 way, and observed the blocking of the tracks described above in paragraph 7.

24 9. Approximately 10 individuals acting as or in concert with Respondent's officers
25 and agents were arrested and taken into custody for trespass and blocking the railroad right of
26 way on the morning of September 21, 2011.

10. During the course of the arrests described above in paragraph 9, Respondents Bryan Jacobs and Michael Kelly Muller attempted to interfere with the arrest process, trespassed on the BNSF right of way, and assaulted the law enforcement officers who were clearing the tracks and arresting the trespassers.

11. Due to the conduct described above in paragraphs 7 through 10, on September 21, 2011, Petitioner asked this Court to find Respondents in contempt of the Injunction.

12. A hearing was held before this Court on October 14, 2011 to hear testimony, arguments by the parties and to adjudge whether Respondents were in contempt of the Injunction.

13. There has been no evidence adduced that any of Respondents, their officials, or those acting in concert with them, took reasonable steps to secure compliance with the Injunction.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of these proceedings, and under 29 U.S.C. §§ 160(j) and (l), is empowered to grant injunctive relief.

2. This Court, upon a showing of clear and convincing evidence, has the authority to find parties in civil contempt of its injunctions issued on matters brought pursuant to §§ 160(j) and (l) of the Act. *Hoffman v. ILWU, Local 10*, 492 F. 2d 929 (9th Cir. 1974), *cert. granted sub nom. on other grounds and affirmed*, *Muniz v. Hoffman*, 422 U.S. 454 (1975), *citing Madden v. Grain Elevator, Flour & Feed Mill Workers*, 334 F.2d 1014, 1020 (7th Cir. 1974), *cert. denied*, 379 U.S. 967 (1965).

3. This Court may find Respondents responsible for misconduct if Respondents approved the misconduct, participated actively, or knowingly tolerated it. *United Mine Workers v. Gibbs*, 383 U.S. 715, 739 (1966). *See, e.g., Soft Drink Workers Union Local 812*, 304 NLRB 111 (1991) (when union actually or implicitly authorized the conduct before or after it happened, it is

1 responsible for misconduct); *Teamsters Local 860*, 229 NLRB 993, 994 (1977) (same). Their
2 "responsibility for acts by [their] officers and members is controlled by common-law agency
3 principles; therefore implied or apparent authority is sufficient to establish agency." *NLRB v.*
4 *Advanced Sys., Inc.*, 681 F.2d 570, 576 (9th Cir. 1982). Further, where there is a pattern of
5 misconduct, the union is liable absent affirmative steps to end the misconduct. *Dover Corp.*, 211
6 NLRB 955, 956-59 (1974), *enforced*, 535 F.2d 1205 (10th Cir. 1976).

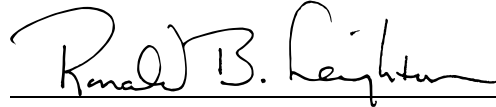
7 4. There is, and the Court has, reasonable cause to believe by the presentation of
8 clear, cogent and convincing evidence at the hearing on October 14, 2011, that Respondents are
9 responsible for and have themselves violated the terms of the Injunction by engaging in the
10 blocking of ingress of the BNSF train at Longview scheduled to deliver corn to the EGT facility,
11 unlawful picketing, violence, and trespassing on September 21, 2011.

12 5. On October 14, 2011, this Court issued an Order adjudicating Respondents to
13 be in civil contempt of the Injunction. [Document No. 111].

14 6. Having found Respondents to be in contempt of the Injunction, this Court shall
15 award compensatory damages for the harm caused on September 21, 2011, and reiterate its fine
16 schedule to compel future compliance with the preliminary injunction as is permitted by
17 precedent. *International Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994) (fines
18 to compel future compliance appropriate); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991)
19 (compensatory damages include attorneys' fees); *Fleischmann Distilling Corp. v. Maier Brewing*
20 *Co.*, 386 U.S. 714, 718 (1967) (compensatory damages include attorneys' fees); *United Mine*
21 *Workers*, 330 U.S. at 304 (compensatory damages); *Cunningham v. Weston*, 180 Fed. Appx.
22 644, 648 (9th Cir. 2006) (compensatory damages); *NLRB v. Ironworkers Local 433*, 169 F.3d
23 1217, 1218, 1221 (9th Cir. 1999) (enforcement of prospective non-compliance fine for alleged
24 violations does not trigger need for criminal procedural safeguards if fines are prompted by a

1 party's previous failure to adhere to a court order); *Richmark Corp. v. Timber Falling Consultants*,
2 959 F.2d 1468, 1482 (9th Cir. 1992) (coercive fines payable to the Court).

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4 **DATED** this 31st day of October, 2011.

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7 **RONALD B. LEIGHTON**
8 **UNITED STATES DISTRICT JUDGE**
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12 Presented by:

13
14 /s/ Anne Pomerantz

15 /s/ Daniel Sanders

16 /s/ John Fawley

17 /s/ Helena Fiorianti

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